IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 581 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVIN KANTILAL RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 581 of 2002

MR PARESH UPADHYAY for Petitioner No. 1

MS HARSHA DEVANI, AGP for Respondents No. 1-2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/02/2002

ORAL JUDGEMENT

#. Rule. Ms.Harsha Devani, learned AGP, waives service of rule for the respondents. With the consent of the parties, the matter is taken up for final hearing today.

#. The petitioner was appointed as Assistant Engineer (Electrical) on 21.11.1983. On completion of nine years' service on 21.11.1992 in the cadre of Assistant Engineer (Electrical), the petitioner was given the benefit of higher grade scale as per the policy of the Government. The order to that effect was issued on 19.6.1993 whereby the pay of the petitioner was fixed at Rs.2725/- in the pay scale of Rs.2200 - 4000. While fixing the said scale, yearly increment to which the petitioner was entitled to was also taken into consideration. The petitioner was, subsequently, promoted to the post of Deputy Executive Engineer on 6.11.1996. In the year 1998, the Government revised the pay and the same was made effective with effect from 1.1.1996 and accordingly, the pay-scale of the petitioner was revised with effect from 1.1.1996. However, subsequently, the department issued the order dated 24.10.2001 whereby it is ordered that the pay of the petitioner which was fixed at Rs.2725/- with effect from 21.11.1992 is required to be changed and fixed at Rs.2575/-. On the basis of the aforesaid refixation of the pay of the petitioner, consequential order of recovery was also ordered by the Government. The order by which the pay of the petitioner is revised is placed at Annexure-A which is communicated by the Section Officer, R & B Department. Consequential order is also annexed at page 9 - Annexure-B to the petition and the same is dated 15.12.2001. It is also mentioned in the order at Annexure-B to the petition that, appropriate order of recovery will be passed against the petitioner subsequently.

#. The aforesaid orders at Annexures-A and B are impugned at the instance of the petitioner on the ground that the said orders are passed without hearing the petitioner and since the petitioner was not responsible in any manner insofar as the fixation of his pay is concerned, and therefore, there is no question of recovering any amount from the petitioner.

#. Mr.Upadhyay submitted that the petitioner was not instrumental in any manner so far as the fixation of his pay is concerned, and therefore, the order of recovery should not have been passed. For that purpose, he has relied upon the decision of this Court in Letters Patent Appeal No.578 of 2000 wherein the order of recovery was struck down by this Court. Mr.Upadhyay has also relied upon the provisions of Rule 57-A of the BCSR to substantiate his say that the recovery cannot be effected from the petitioner.

#. Against the aforesaid argument, it is submitted by Ms.Devani, learned AGP that the facts of Letters Patent Appeal No.578 of 2000 are entirely different. So far as the facts of the present case is concerned, the petitioner was very well knew that the fixation which was made was not correct one and that it was his duty to point out to the department that wrong fixation has been made. She further submitted that, it was a case of merely a clerical mistake which according to her, can be corrected at any time and on that basis, recovery can be effected. She, however, conceded that the impugned order is passed without hearing the petitioner.

#. Considering the arguments of both the sides, I am of the opinion that the impugned orders at Annexures-A and B are required to be set aside on the ground that, before passing the said orders, the petitioner was not given opportunity of being heard. Only on this short ground, the petition is required to be allowed. It is not necessary, therefore, to examine the matter on merit. Since the orders in question are passed without hearing the petitioner, the petition is required to be allowed. No orders which have civil consequences can be passed without hearing the concerned person. By the impugned order, pay-scale of the petitioner is reduced and consequential order of recovery is likely to be passed. In that view of the matter, such decision is required to be taken only after hearing the present petitioner.

#. In that view of the matter, impugned orders at Annexures-A and B, which are passed against the petitioner without hearing him, are quashed and set aside. It will be open for the department to pass appropriate order after hearing the petitioner in this connection. It is needless to say that, such order will be passed in accordance with law. It is clarified that, if such order is against the petitioner, it will be open for him to challenge the same in accordance with law. It is further clarified that, this Court has not examined the matter on merit and it is for the department to pass appropriate order again after hearing the petitioner. The petition is allowed. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar,J)
(pathan)